

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0450P

Use Tax

Calendar Years 1995, 1996, 1997

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty and interest assessed on an audit completed on May 6, 1998.

Taxpayer failed to remit use tax on clearly taxable items and had no use tax accrual system in place.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer's audit report revealed that no use tax accrual system was in place and it is not required to be registered as a retail merchant. Taxpayer was audited for calendar years 1995, 1996, and 1997. It was notified in January 1998 that an audit would be scheduled.

Taxpayer states it discussed with the auditor, the matter of whether to report and pay the 1997 use tax with their 1997 income tax return due April 15, 1998. Taxpayer was told not to pay the 1997 use tax as it was being assessed in the Audit and should be paid upon the audit report. For that reasons they did not pay the tax.

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Taxpayer, however, would have reported and remitted tax after it was made aware of the tax issue prior to filing its 1997 return. The department, hereby, waives the penalty for calendar year 1997 but has no authority to waive interest.

FINDING

Taxpayer's protest is sustained.